



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2012-0639; FRL-9769-9]

## Approval and Promulgation of Air Quality Implementation Plans; Arkansas; Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve two revisions to the Arkansas State Implementation Plan (SIP) submitted by the Arkansas Department of Environmental Quality (ADEQ) to EPA on February 17, 2010 and November 6, 2012. The February 17, 2010 proposed SIP revision to the Arkansas New Source Review (NSR) Prevention of Significant Deterioration (PSD) program updates the Arkansas SIP to incorporate by reference (IBR) requirements for the Federal PSD permitting program under EPA's November 29, 2005 Phase 2 8-hour Ozone Implementation rule. The November 6, 2012 proposed SIP revision to the Arkansas NSR PSD program provides the state of Arkansas with the authority to issue PSD permits governing greenhouse gas (GHG) emissions and establishes appropriate emission thresholds for determining which new stationary sources and modifications to existing stationary sources become subject to Arkansas's PSD permitting requirements for their GHG emissions. The November 6, 2012 proposed SIP revision also defers until July 21, 2014 application of the PSD permitting requirements to biogenic carbon dioxide emissions from bioenergy and other biogenic stationary sources. EPA is proposing to approve the February 17, 2010, and November 6, 2012 SIP revisions to the Arkansas NSR PSD permitting program as consistent with Federal

requirements for PSD permitting. EPA is also proposing to rescind the GHG PSD Federal Implementation Plan (FIP) for Arkansas that was put in place to ensure the availability of a permitting authority for GHG permitting in Arkansas, upon final approval of the November 6, 2012 PSD SIP revisions. EPA is proposing this action under the Clean Air Act (the Act).

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R06-OAR-2012-0639, by one of the following methods:

- Federal Rulemaking Portal: *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- E-mail: Mr. Mike Miller at *miller.michael@epa.gov*.
- Fax: Mr. Mike Miller, Air Permits Section (6PD-R), at fax number 214-665-6762.
- Mail: Mr. Mike Miller, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.
- Hand or Courier Delivery: Mr. Mike Miller, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8:30 a.m. and 4:30 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R06-OAR-2012-0639. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business

Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through <http://www.regulations.gov> or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The <http://www.regulations.gov> website is an “anonymous access” system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA’s public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index.

Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 AM and 4:30 PM weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION**

**CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittals related to this SIP revision, and which are part of the EPA docket, are also available for public inspection at the Local Air Agency listed below during official business hours by appointment:

Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mike Miller (6PD-R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD-R), Suite 1200, Dallas, TX 75202-2733. The telephone number is (214) 665-7550. Mr. Miller can also be reached via electronic mail at [miller.michael@epa.gov](mailto:miller.michael@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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### **I. Background for Our Proposed Action**

The Act at section 110(a)(2)(C) requires states to develop and submit to EPA for approval into the state SIP, preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the New Source Review (NSR) SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the NAAQS – “attainment areas” – as well as areas where there is insufficient information to determine if the area meets the NAAQS – “unclassifiable areas.” The NNSR SIP program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS – “nonattainment areas.” The Minor NSR SIP program addresses construction or modification activities that do not emit, or have the potential to emit, beyond certain major source thresholds and thus do not qualify as “major” and applies regardless of the designation of the area in which a source is located. EPA regulations governing the criteria that states must satisfy for EPA approval of the NSR programs as part of the SIP are contained in 40 CFR sections 51.160 - 51.166.

Arkansas submitted on February 17, 2010 and November 6, 2012, a collection of

regulations for approval by EPA into the Arkansas SIP, including some regulations specific to the Arkansas PSD permitting program. The February 17, 2010 SIP submittal includes the PSD permitting provisions that were adopted on December 5, 2008 at Regulation 19, Chapter 9 to ensure consistency with the federal PSD permitting requirements promulgated in EPA's Phase 2 8-hour Ozone Implementation Rule (70 FR 71612, November 29, 2005). The November 6, 2012 SIP submittal includes the PSD permitting provisions to 1) establish that the state of Arkansas has the authority to issue PSD permits governing GHG emissions, and 2) establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Arkansas's PSD permitting requirements for their greenhouse gas (GHG) emissions consistent with the "PSD and Title V Greenhouse Gas Tailoring Final Rule" (75 FR 31514, June 3, 2010) hereafter referred to as the "Tailoring Rule", and 3) defers the application of the PSD requirements to biogenic carbon dioxide emissions from bioenergy and other biogenic stationary sources consistent with the EPA's final rule "Deferral for CO<sub>2</sub> Emissions from Bioenergy and other Biogenic Sources under the Prevention of Significant Deterioration (PSD) and Title V Programs" (76 FR 43490, July 20, 2011).

Today's proposed action and the accompanying Technical Support Document (TSD) present our rationale for proposing approval of these regulations as meeting the minimum federal requirements for the adoption and implementation of the PSD SIP permitting programs. Note that Arkansas is currently subject to the GHG PSD Federal Implementation Plan (FIP) at 40 CFR 52.37(b)(2). See 75 FR 82246, December 30, 2010. We are also proposing to rescind the GHG PSD FIP for Arkansas when we finalize today's proposed action.

#### **A. History of EPA's GHG-Related Actions**

This section briefly summarizes EPA's recent GHG-related actions that provide the background for this action. Please see the preambles for the identified GHG-related rulemakings for more information.

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part are distinct from one another, establish the overall framework for today's final action on the Arkansas SIP. Four of these actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which EPA issued in a single final action,<sup>1</sup> the "Johnson Memo Reconsideration,"<sup>2</sup> the "Light-Duty Vehicle Rule,"<sup>3</sup> and the "Tailoring Rule."<sup>4</sup> Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources. PSD is implemented through the SIP system, and so in December 2010, EPA promulgated several rules to implement the new GHG PSD SIP program. Recognizing that some states had approved SIP PSD programs that did not apply PSD to GHGs, EPA issued a SIP call on December 13, 2010, that would require those states with SIPs that have approved PSD programs but do not authorize

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1 "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

2 "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

3 "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

4 Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule." 75 FR 31514 (June 3, 2010).

PSD permitting for GHGs to submit a SIP revision providing such authority.<sup>5</sup> The State of Arkansas, along with several other states, did not submit a corrective SIP revision to apply their CAA PSD programs to sources of GHG emissions by the established deadline. EPA published a finding of failure to submit the required SIP revision by the specified deadline and then promulgated the GHG PSD FIP to ensure the availability of a permitting authority for GHG emitting sources subject to PSD requirements in Arkansas and the other states.<sup>6,7</sup>

For other states, EPA recognized that many states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tpy of GHG, and that do not limit PSD applicability to GHGs to the higher thresholds in the Tailoring Rule; therefore, EPA issued the GHG PSD SIP Narrowing Rule.<sup>8</sup> Under that rule, EPA withdrew its approval of the affected SIPs to the extent those SIPs covered GHG-emitting sources below the Tailoring Rule thresholds. EPA based its action primarily on the “error correction” provisions of CAA section 110(k)(6).

## **B. EPA’s Biomass Deferral Rule**

On July 20, 2011, EPA promulgated the final “Deferral for CO<sub>2</sub> Emissions from Bioenergy and other Biogenic Sources Under the Prevention of Significant Deterioration (PSD)

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5 “Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call,” 75 FR 77698 (Dec. 13, 2010). Specifically, by notice dated December 13, 2010, EPA finalized a “SIP Call” that would require those states with SIPs that have approved PSD programs but do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority.

6 “Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases,” 75 FR 81874 (December 29, 2010).

7 “Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan,” 75 FR 82246 (December 30, 2010). Because Arkansas did not submit by their established deadline, a corrective SIP revision to apply their Clean Air Act PSD program to sources of GHGs, Arkansas is subject to the GHG PSD FIP.

8 “Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans,” 75 FR 82536 (December 30, 2010). The GHG PSD SIP Narrowing Rule does not apply to Arkansas because the GHG PSD FIP is in place.



and Title V Programs” (Biomass Deferral Rule). Following is a brief discussion of the deferral. For a full discussion of EPA's rationale for the rule, see the notice of final rulemaking at 76 FR 43490.

The biomass deferral delays until July 21, 2014 the consideration of CO<sub>2</sub> emissions from bioenergy and other biogenic sources (hereinafter referred to as “biogenic CO<sub>2</sub> emissions”) when determining whether a stationary source meets the PSD and Title V applicability thresholds, including those for the application of BACT. As with the Tailoring Rule, the Biomass Deferral addresses both PSD and Title V requirements. However, EPA is only taking action on Arkansas’s PSD program as part of this action. Stationary sources that combust biomass (or otherwise emit biogenic CO<sub>2</sub> emissions) and construct or modify during the deferral period will avoid the application of PSD to the biogenic CO<sub>2</sub> emissions resulting from those actions. The deferral applies only to biogenic CO<sub>2</sub> emissions and does not affect non-GHG pollutants or other GHG's (e.g., methane (CH<sub>4</sub>) and nitrous oxide (N<sub>2</sub>O)) emitted from the combustion of biomass fuel. Also, the deferral only pertains to biogenic CO<sub>2</sub> emissions in the PSD and Title V programs and does not pertain to any other EPA programs such as the GHG Reporting Program. Biogenic CO<sub>2</sub> emissions are defined as emissions of CO<sub>2</sub> from a stationary source directly resulting from the combustion or decomposition of biologically-based materials other than fossil fuels and mineral sources of carbon. Examples of “biogenic CO<sub>2</sub> emissions” include, but are not limited to:

- CO<sub>2</sub> generated from the biological decomposition of waste in landfills, wastewater treatment or manure management processes;
- CO<sub>2</sub> from the combustion of biogas collected from biological decomposition of waste in landfills, wastewater treatment or manure management processes;
- CO<sub>2</sub> from fermentation during ethanol production or other industrial fermentation

processes;

- CO<sub>2</sub> from combustion of the biological fraction of municipal solid waste or biosolids;
- CO<sub>2</sub> from combustion of the biological fraction of tire-derived fuel; and
- CO<sub>2</sub> derived from combustion of biological material, including all types of wood and wood waste, forest residue, and agricultural material.

EPA recognizes that use of certain types of biomass can be part of the national strategy to reduce dependence on fossil fuels. Efforts are underway at the Federal, state and regional level to foster the expansion of renewable resources and promote bioenergy projects when they are a way to address climate change, increase domestic alternative energy production, enhance forest management and create related employment opportunities. We believe part of fostering this development is to ensure that those feedstocks with negligible net atmospheric impact not be subject to unnecessary regulation. At the same time, it is important that EPA have time to conduct its detailed examination of the science and technical issues related to accounting for biogenic CO<sub>2</sub> emissions and therefore have finalized this deferral. The deferral is intended to be a temporary measure, in effect for no more than three years, to allow the Agency time to complete its work and determine what, if any, treatment of biogenic CO<sub>2</sub> emissions should be in the PSD and Title V programs. The biomass deferral rule is not EPA's final determination on the treatment of biogenic CO<sub>2</sub> emissions in those programs. The Agency plans to complete its science and technical review and any follow-on rulemakings within the three-year deferral period and further believes that three years is ample time to complete these tasks. It is possible that the subsequent rulemaking, depending on the nature of EPA's determinations, would supersede the biomass deferral rulemaking and become effective in fewer than three years. In that event, Arkansas may revise its SIP accordingly.

For stationary sources co-firing fossil fuel and biologically-based fuel, and/or combusting mixed fuels (e.g., tire derived fuels, municipal solid waste (MSW)), the biogenic CO<sub>2</sub> emissions from that combustion are included in the biomass deferral. However, the fossil CO<sub>2</sub> emissions are not. Emissions of CO<sub>2</sub> from processing of mineral feedstocks (e.g., calcium carbonate) are also not included in the deferral. Various methods are available to calculate both the biogenic and fossil portions of CO<sub>2</sub> emissions, including those methods contained in the GHG Reporting Program (40 CFR Part 98). Consistent with the other pollutants in PSD and Title V, there are no requirements to use a particular method in determining biogenic and fossil CO<sub>2</sub> emissions.

EPA's final biomass deferral rule is an interim deferral for biogenic CO<sub>2</sub> emissions only and does not relieve sources of the obligation to meet the PSD and Title V permitting requirements for other pollutant emissions that are otherwise applicable to the source during the deferral period or that may be applicable to the source at a future date pending the results of EPA's study and subsequent rulemaking action. This means, for example, that if the deferral is applicable to biogenic CO<sub>2</sub> emissions from a particular source during the three-year effective period and the study and future rulemaking do not provide for a permanent exemption from PSD and Title V permitting requirements for the biogenic CO<sub>2</sub> emissions from a source with particular characteristics, then the deferral would end for that type of source and its biogenic CO<sub>2</sub> emissions would have to be appropriately considered in any applicability determinations that the source may need to conduct for future stationary source permitting purposes, consistent with that subsequent rulemaking and the Final Tailoring Rule (e.g., a major source determination for Title V purposes or a major modification determination for PSD purposes).

EPA also wishes to clarify that we did not require that a PSD permit issued during the deferral period be amended or that any PSD requirements in a PSD permit existing at the time

the deferral took effect, such as BACT limitations, be revised or removed from an effective PSD permit for any reason related to the deferral or when the deferral period expires. Section 52.21(w) of 40 CFR requires that any PSD permit shall remain in effect, unless and until it expires or it is rescinded, under the limited conditions specified in that provision. Thus, a PSD permit that is issued to a source while the deferral was effective need not be reopened or amended if the source is no longer eligible to exclude its biogenic CO<sub>2</sub> emissions from PSD applicability after the deferral expires. However, if such a source undertakes a modification that could potentially require a PSD permit and the source is not eligible to continue excluding its biogenic CO<sub>2</sub> emissions after the deferral expires, the source will need to consider its biogenic CO<sub>2</sub> emissions in assessing whether it needs a PSD permit to authorize the modification.

Any future actions to modify, shorten, or make permanent the deferral for biogenic sources are beyond the scope of the biomass deferral action and this proposed approval of the deferral into the Arkansas SIP, and will be addressed through subsequent rulemaking. The results of EPA's ongoing review of the science related to net atmospheric impacts of biogenic CO<sub>2</sub> are incomplete. The framework to properly account for such emissions in Title V and PSD permitting programs based on the study is also incomplete. Thus, we are unable to determine which biogenic CO<sub>2</sub> sources currently subject to the deferral would be subject to any permanent exemptions, or would be potentially required to account for their emissions in the future rulemaking EPA has committed to undertake. Only in that future rulemaking can EPA address the question of extending the deferral or putting in place requirements that would have the equivalent effect on sources covered by the biomass deferral. Once that rulemaking has occurred, Arkansas may address related revisions to its SIP.

## **II. Summary of State Submittals**

EPA most recently approved revisions to the Arkansas PSD SIP on April 12, 2007, where we updated our approval of the Arkansas PSD SIP to include the revisions adopted by the State on February 3, 2005 (72 FR 18394). Since that time, Arkansas has submitted two revisions to the AR PSD SIP on February 17, 2010, and November 6, 2012.

**A. February 17, 2010**

In a letter dated February 17, 2010, Governor Beebe submitted revisions to the Arkansas PSD SIP that were adopted by the Arkansas Pollution Control and Ecology Commission on December 5, 2008, and became effective on January 15, 2009. This February 17, 2010, SIP submittal consisted of the following revisions to Regulation 19, Chapter 9, Prevention of Significant Deterioration, of the Arkansas Plan of Implementation for Air Pollution Control:

- Non-substantive revisions to Regulation 19.902 to correct general formatting and typographical errors,
- Substantive revisions to Regulation 19.903 to update the incorporation by reference date of the federal PSD program through November 29, 2005, and
- Substantive revisions to Regulation 19.904 to update the incorporation by reference date of the federal PSD program through November 29, 2005, and non-substantive revisions to update internal numbering within the Arkansas rules.

Taken together, the revisions to Regulations 19.902 – 19.904 ensure consistency with the federal PSD permitting requirements promulgated in EPA’s Phase 2 8-hour Ozone Implementation Rule (70 FR 71612, November 29, 2005).<sup>9</sup>

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<sup>9</sup> “Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline.”

**B. November 6, 2012**

In a letter dated November 6, 2012, Governor Beebe submitted revisions to the Arkansas SIP that were adopted by the Arkansas Pollution Control and Ecology Commission on June 22, 2012 and October 26, 2012. This SIP submittal consisted of the following revisions:

- The request to withdraw the existing SIP-approved fee regulations at Regulation 9 and replace with the submitted provisions at Regulation 9, Chapters 1, 2, 3, 5 and 9. This submittal includes substantive revisions to Regulation 9, Sections 9.502(B) and (C) for fee assessments of GHG permits;
- Substantive revisions to Regulation 19, Chapter 1 to add a rescission clause pertaining to GHG PSD permitting;
- Substantive revisions to Regulation 19, Chapter 2 definitions to add definitions for CO<sub>2</sub>e, federally regulated air emissions and GHGs,
- Substantive revisions to Regulation 19.407(C)(3) for permit amendments;
- Substantive revisions to Regulation 19, Chapter 9, Section 19.904(G) establishing GHG PSD permitting requirements and the provisions of the GHG biomass deferral,
- Substantive revisions to Regulation 19, Appendix A Insignificant Activities List to clarify GHG permitting applicability,
- Substantive revisions to Regulation 26, Section 26.401 to clarify an applicant's duty to apply for permitting in Arkansas.

The revisions submitted on November 6, 2012 to the AR PSD SIP at Regulation 19, Chapter 9 will 1) establish that the state of Arkansas has the authority to issue PSD permits for GHG emissions under the PSD program, 2) establish appropriate emission thresholds for

determining which new stationary sources and modification projects become subject to Arkansas's PSD permitting requirements for their greenhouse gas (GHG) emissions consistent with the Tailoring Rule, and 3) defer the application of the PSD requirements to biogenic carbon dioxide emissions from bioenergy and other biogenic stationary sources consistent with EPA's Biomass Deferral Rule.

EPA's proposed action today will only evaluate the revisions necessary to adopt and implement the permitting of GHG emissions subject to PSD permitting at Regulation 19, Chapter 9. EPA is severing and taking no action at this time on the remaining components of the November 6, 2012 SIP submittal. Specifically, we are severing and taking no action on the revisions to Regulation 9; Regulation 19, Chapters 1, 2, 4, and Appendix A; and Regulation 26. By severing, we mean that the submitted portions of the SIP revision that address Arkansas's ability to issue PSD permit for GHG emissions subject to EPA's Tailoring Rule can be implemented independently of the portions of the submittal relating to air permit fees, general air definitions and permitting below PSD thresholds. EPA anticipates taking action on the remaining portions of the November 6, 2012 SIP submittal at a later date.

### **III EPA's Analysis of State Submittals**

#### **A. February 17, 2010**

The Phase 2 8-Hour Ozone Implementation Rule required states to submit applicable SIP revisions to EPA no later than June 15, 2007, to address this Rule's SIP requirements for both the PSD and NNSR programs. The SIP revision submittals were required by this Rule to revise the major source thresholds, significant emission rates, and offset ratios for ozone such that nitrogen oxides (NO<sub>x</sub>) are recognized as an ozone precursor. Arkansas's February 17, 2010 SIP submittal updated the incorporation by reference date of the federal PSD program to November

29, 2005, which is the date of the Phase 2 rule. Therefore the Arkansas PSD SIP updates are consistent with the federal Phase 2 PSD permitting requirements.

EPA partially approved and partially disapproved the Arkansas Infrastructure SIP on August 20, 2012 (77 FR 50033). In this action we approved the revisions in Regulation 19.903 and 19.904 specific to NO<sub>x</sub> as a precursor to ozone for the implementation of the Phase 2 8-hour ozone rule. However, we did not update the amendatory language table at 40 CFR 52.170 to reflect that the revisions to Regulation 19.902 – 19.904 as adopted on December 5, 2008, and submitted on February 17, 2010, were approved. Therefore, today's proposed action includes a proposal to fully approve the AR PSD program revisions adopted on December 5, 2008, and submitted on February 17, 2010.

**A. November 6, 2012**

As explained more fully in the accompanying TSD in this rulemaking, Arkansas has adopted and submitted regulations that are substantively similar to the federal requirements for the permitting of GHG-emitting sources subject to PSD. The detailed analysis in our TSD demonstrates that the regulatory revisions adopted on June 22, 2012 and submitted on November 6, 2012; establish that Arkansas has the authority to issue PSD permits for GHG-emitting sources subject to PSD consistent with the federal PSD requirements of EPA's final GHG Tailoring Rule. The revisions also establish thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under its PSD program. Our analysis also demonstrates that the regulatory revisions adopted on October 26, 2012 and submitted on November 6, 2012, appropriately defer the applicability of these thresholds for biogenic CO<sub>2</sub> emissions from bioenergy and other biogenic stationary sources consistent with EPA's Biomass Deferral Final Rule.



#### **IV. What Action is EPA Proposing?**

EPA proposes to approve the February 17, 2010 and November 6, 2012, submitted revisions to Regulation 19, Chapter 9 into the Arkansas PSD SIP. Arkansas's February 17, 2010, proposed SIP revision updates the incorporation by reference date of the PSD program to address the permitting requirements in EPA's Phase 2 8-hour ozone final rule. Arkansas's November 6, 2012, proposed SIP revision (1) provides the state of Arkansas with the authority to issue PSD permits governing GHGs, and (2) establishes appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the preliminary determination that the February 17, 2010 and November 6, 2012 revisions to Regulation 19, Chapter 9 are approvable because they are adopted and submitted in accordance with the CAA and EPA regulations regarding PSD permitting for 8-hour ozone and GHGs. Therefore, under section 110 and parts C and D of the Act, and for the reasons stated above, EPA proposes to approve the following revisions to the Arkansas SIP:

- Substantive revisions to Regulation 19, Chapter 9, Sections 19.903 and 19.904 to update the incorporation by reference date of the PSD program,
- Substantive revisions to Regulation 19, Chapter 9, Section 19.904(G) establishing GHG PSD permitting requirements and the biomass deferral provisions.

As explained in today's proposed notice, Arkansas is subject to the Federal Implementation Plan for PSD permitting of GHG emissions. This GHG PSD FIP remains in place and EPA remains the PSD permitting authority for GHG-emitting sources in Arkansas until EPA finalizes our proposed approval of the November 6, 2012 submitted revisions to the

Arkansas SIP. Therefore, we propose that upon finalization of today's action, EPA will rescind the GHG PSD FIP for Arkansas at 40 CFR 52.37(b)(2).

Consistent with the analysis presented in today's proposed notice and the accompanying TSD, EPA is severing and taking no action on the fee related regulations at Regulation 9; as well as the revisions to Regulation 19, Chapters 1, 2, 4 and Appendix A, and Regulation 26, submitted on November 6, 2012.

## **V. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 17, 2012.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2013-00429 Filed 01/10/2013 at 8:45 am; Publication Date: 01/11/2013]